IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10177 of 1999
and
SPECIAL CIVIL APPLICATION No 5551 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAGWANDAS BULCHAND ASNANI

Versus

DIRECTOR OF PENSION & PF

Appearance:

1. Special Civil Application No. 10177 of 1999
MR LM CHHABLANI for Petitioner No. 1
MR SUDHIR M MEHTA, Ld. AGP for Respondents
RULE SERVED for Respondent No. 2

2. Special Civil Application No. 5551 of 2000
MR HV PUJARA for Petitioner No. 1
MR SUDHIR M MEHTA, Ld. AGP for Respondents
RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 15/01/2003

COMMON ORAL JUDGEMENT

1. With the consent of the parties the matter is taken up for final hearing. Since the facts are more or less common and the questions involved are common in both the petitions, they are dealt with the common judgement.

2. The short facts of the case are that the petitioners have retired from service on 31-12-1995 afternoon. The Government revised the pay-scale of the employees w.e.f. 1-1-1996. It is the case of the petitioners that the Government initially issued a Resolution No.PGR/1098/6/M dated 20-1-1998 for the revision of the pension of the employees, who were drawing pension on or before 31-12-1995 and the petitioners were not drawing pension on 31-12-1995 and, therefore, the petitioners would not be included in the said resolution. It is further the case of the petitioners that the Government simultaneously on the same day issued another resolution bearing No.PGR/1098/7/M dated 20-1-1998 for revision of the pension and as per the said resolution since the benefits are to be given for revision of the pension of the employees, who retired from 1-1-1996 onwards, the pension of the petitioners is required to be fixed accordingly. The contention of the petitioners is that the respondents have fixed the pension of the petitioners as if they have retired on 31-12-1995 and as a consequence thereof, the benefits of the recommendations of Fifth Central Pay Commission to be given to its employees w.e.f. 1-1-1996 is not given for the purpose of fixation of pension and, therefore, these petitions.

3. Mr.Chhablani as well as Mr.Pujara, learned Counsel appearing for respective petitioners, have submitted that their case is covered by the Resolution No.PGR/1098/7/M dated 20-1-1998 in as much as they can be said to have retired from 1-1-1996 and it has also been submitted that they were not drawing pension or no pension was sanctioned so far as the petitioners are concerned as on 31-12-1995 and, therefore, the pension of the petitioners is required to be revised as if they have retired from 1-1-1996. In furtherance to the aforesaid submission, Mr.Pujara has relied upon the judgement of the Central Administrative Tribunal in OA Nos.459/1997 and 460/1997 in the case of "Venkatram Rajagopalan v. Union of India and Ors." and the copy of the said judgement dated 15th October, 1999 upon which reliance is

placed is produced at Annexure "H" to the petition. It has been submitted that, therefore, the petitioners can be said to have retired on 1-1-1996 and as a consequence thereof, the petitioners would be entitled to the revision of the pension by having benefits of the recommendation of Fifth Central Pay Commission and, therefore, it has been submitted that the respondents should be directed to revise the pension of the petitioners accordingly.

4. On behalf of the State Government, affidavit-in-reply has been filed contending, inter alia, that the petitioners can be said to have retired only on 31-12-1995 and, therefore, they would not be entitled to the benefits of the revision of the pension. It has also been submitted that there was some ambiguity regarding the interpretation and at one point of time, the Finance Department of the State Government had issued letter dated 9th September, 1999, which subsequently has been cancelled on 1-11-1999, because the decision was taken by the Government in consultation with the Government of India and the petitioners shall not be entitled to revised pay-scale and as a consequence thereof no revised pension as if they have retired from 1-1-1996.

5. In view of the above, the questions which arise for consideration would be regarding the relevant date on which the petitioners have retired and secondly for the purpose of pension, whether the petitioners can be said to have been entitled for the revision of the pay-scale as per the recommendation of the Fifth Central Pay Commission, when the Government has taken decision of revising the pay-scale of its employees w.e.f. 1-1-1996?

6. There is no dispute on the point that the Government has revised the pay-scale of its employees as per the recommendation of the Fifth Central Pay Commission w.e.f. 1-1-1996. In my view, the basis for the purpose of fixing the pension would be the pay-scale to which the employee would be entitled on the last day of the retirement. The sanctioning of the pension is a consequence, but the relevant and rather the most important aspect for the purpose of fixation of the pension would be the last salary drawn by the employee concerned. Therefore, when the petitioners retired from 31-12-1995, naturally they would not be entitled for the revision of the pay-scale as per the recommendation of the Fifth Central Pay Commission from 1-1-1996. The relationship of the employer and the employee came to be terminated from 31-12-1995. Therefore, when the petitioners themselves would not be entitled for revision

of the pay-scale, had they continued in service upto 31-12-1995, naturally they would not be entitled to revised fixation of the pension for the period thereafter. Therefore, the relevant date for the purpose of fixation of the pension would be 31-12-1995 and not 1-1-1996. Merely because the petitioners have drawn the salary of 31-12-1995 or they have worked on 31-12-1995 makes no difference so far as the fixation of the pension is concerned. It appears that the petitioners were not eligible to get the revision of pay-scale on 1-1-1996 and, therefore, they would not be entitled for revision of the pension.

7. Even otherwise also the perusal of the resolution No.PGR/1098/7/M dated 20-1-1998 makes the said position clear. Clause 2 of the resolution for giving effect to the revision of the pension on account of the decision of the Government to revise the pay-scale of its employees w.e.f. 1-1-1996 reads as under:

"2. Date of effect:-

2(1) The revised provisions as per these orders shall apply to Government employees who have retired/died in harness on or after 1-1-1996. Separate orders have been issued in respect of Government employees who retired/died before 1-1-1996.

2(2) The benefits of the revised pay scales and fixation of pay in the revised scales as the scheme laid down in the Gujarat Civil Services/(ROP) Rules, 1998 should be allowed notionally in the case of voluntary retirement covered under the Government Resolution, Finance Department No.NVN-1070-3158-J dated the 8th October, 1970 and notional pay so worked out should be taken into account for regulating the pension.

2(3) Where Pension / Family Pension / DCRG/ Commutation of pension has already been sanctioned in cases occurring on or after 1-1-1996 the same shall be revised in terms of these orders. In cases where pension has been finally sanctioned on the pre-revised orders and if it happens to be more beneficial than the pension becoming due under these orders, the pension already sanctioned shall not be revised to the disadvantage of the pensioners."

The petitioners, therefore, cannot be said to have retired on or after 1-1-1996 and they can be said to have retired on or before 1-1-1996 and, therefore, the contention of the petitioners that they have retired on or after 1-1-1996 and rather on 1-1-1996 cannot be accepted.

8. It is true that the Central Administrative Tribunal in the above referred judgement has taken the view that if the employee who retired on 31st March or 31st March afternoon, it can be said that he has retired from 1st April forenoon. With respect, I am not in agreement with the view taken by the Central Administrative Tribunal and the reason being that the test would be the relevant pay-scale of the employee concerned for the purpose of fixation of the pension. If the employee would not be entitled to the revised pay-scale, naturally he cannot be given a greater benefit for the purpose of pension. As observed earlier the pension of any employee would be fixed on the basis of the salary drawn by him at the time of retirement. If the petitioners are not entitled for salary by way of revision of pay-scale, which has been given by the Government not from 31-12-1995, but from 1-1-1996, in my view, the different interpretation or effect cannot be made for the purpose of pension and for the purpose of entitlement of revision of the pay-scale and, therefore, with respect, I cannot agree with the view taken by the Central Administrative Tribunal and, further the aforesaid aspect regarding the basis of the entitlement of the pay-scale for the purpose of fixation of the pension is also not considered by the Tribunal in the aforesaid judgement and the same is an additional reason for my disagreement.

9. In view of the above discussion, both the petitions fail and hence the same are rejected. Rule discharged. No cost.

15-1-2003 (Jayant Patel, J.)

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